

SENATE BILL NO. 780

October 30, 1997, Introduced by Senators CHERRY,
VAN REGENMORTER, DINGELL, PETERS, YOUNG, V. SMITH,
ROGERS, CISKY, GEAKE, MC MANUS, O'BRIEN and VAUGHN
and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 1a and 3 of chapter IX (MCL 769.1a and
769.3), section 1a as amended by 1996 PA 560 and section 3 as
amended by 1982 PA 470.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

CHAPTER IX

2 Sec. 1a. (1) As used in this section, "victim" means an
3 individual who suffers direct or threatened physical, financial,
4 or emotional harm as a result of the commission of a felony, mis-
5 demeanor, or ordinance violation. For purposes of
6 subsections (2), (3), (6), (8), (9), and (13), victim includes a
7 sole proprietorship, partnership, corporation, association,
8 governmental entity, or any other legal entity that suffers

1 direct physical or financial harm as a result of a felony,
2 misdemeanor, or ordinance violation.

3 (2) Except as provided in subsection (8), when sentencing a
4 defendant convicted of a felony, misdemeanor, or ordinance viola-
5 tion, the court shall order, in addition to or in lieu of any
6 other penalty authorized by law or in addition to any other pen-
7 alty required by law, that the defendant make full restitution to
8 any victim of the defendant's course of conduct that gives rise
9 to the conviction or to the victim's estate.

10 (3) If a felony, misdemeanor, or ordinance violation results
11 in damage to or loss or destruction of property of a victim of
12 the felony, misdemeanor, or ordinance violation or results in the
13 seizure or impoundment of property of a victim of the felony,
14 misdemeanor, or ordinance violation, the order of restitution may
15 require that the defendant do 1 or more of the following, as
16 applicable:

17 (a) Return the property to the owner of the property or to a
18 person designated by the owner.

19 (b) If return of the property under subdivision (a) is
20 impossible, impractical, or inadequate, pay an amount equal to
21 the greater of subparagraph (i) or (ii), less the value, deter-
22 mined as of the date the property is returned, of that property
23 or any part of the property that is returned:

24 (i) The value of the property on the date of the damage,
25 loss, or destruction.

26 (ii) The value of the property on the date of sentencing.

1 (c) Pay the cost of the seizure or impoundment, or both.

2 (4) If a felony, misdemeanor, or ordinance violation results
3 in physical or psychological injury to a victim, the order of
4 restitution may require that the defendant do 1 or more of the
5 following, as applicable:

6 (a) Pay an amount equal to the cost of actual medical and
7 related professional services and devices relating to physical
8 and psychological care.

9 (b) Pay an amount equal to the cost of actual physical and
10 occupational therapy and rehabilitation.

11 (c) Reimburse the victim or the victim's estate for
12 after-tax income loss suffered by the victim as a result of the
13 felony, misdemeanor, or ordinance violation.

14 (d) Pay an amount equal to the cost of psychological and
15 medical treatment for members of the victim's family that has
16 been incurred as a result of the felony, misdemeanor, or ordi-
17 nance violation.

18 (e) Pay an amount equal to the cost of actual homemaking and
19 child care expenses incurred as a result of the felony, misde-
20 meanor, or ordinance violation.

21 (5) If a felony, misdemeanor, or ordinance violation result-
22 ing in bodily injury also results in the death of a victim, the
23 order of restitution may require that the defendant pay an amount
24 equal to the cost of actual funeral and related services.

25 (6) If the victim or the victim's estate consents, the order
26 of restitution may require that the defendant make restitution in
27 services in lieu of money.

1 (7) If the victim is deceased, the court shall order that
2 the restitution be made to the victim's estate.

3 (8) The court shall order restitution to the crime ~~victims~~
4 ~~compensation board~~ VICTIM SERVICES COMMISSION or to any individ-
5 uals, partnerships, corporations, associations, governmental
6 entities, or other legal entities that have compensated the
7 victim or the victim's estate for a loss incurred by the victim
8 to the extent of the compensation paid for that loss. The court
9 shall also order restitution for the costs of services pro-
10 vided to persons or entities that have provided services to
11 the victim as a result of the felony, misdemeanor, or ordinance
12 violation. Services that are subject to restitution under this
13 subsection include, but are not limited to, shelter, food, cloth-
14 ing, and transportation. However, an order of restitution shall
15 require that all restitution to a victim or a victim's estate
16 under the order be made before any restitution to any other
17 person or entity under that order is made. The court shall not
18 order restitution to be paid to a victim or victim's estate if
19 the victim or victim's estate has received or is to receive com-
20 pensation for that loss, and the court shall state on the record
21 with specificity the reasons for its action. If an entity enti-
22 tled to restitution under this subsection for compensating the
23 victim or the victim's estate cannot or refuses to be reimbursed
24 for that compensation, the restitution paid for that entity shall
25 be deposited by the state treasurer in the crime victim's rights
26 fund created under section 4 of ~~Act No. 196 of the Public Acts~~

1 of 1989, being ~~section 780.904 of the Michigan Compiled Laws~~
2 1989 PA 196, MCL 780.904, or its successor fund.

3 (9) Any amount paid to a victim or a victim's estate under
4 an order of restitution shall be set off against any amount later
5 recovered as compensatory damages by the victim or the victim's
6 estate in any federal or state civil proceeding and shall reduce
7 the amount payable to a victim or a victim's estate by an award
8 from the crime ~~victims compensation board~~ VICTIM SERVICES
9 COMMISSION made after an order of restitution under this
10 section.

11 (10) If not otherwise provided by the court under this sub-
12 section, restitution shall be made immediately. However, the
13 court may require that the defendant make restitution under this
14 section within a specified period or in specified installments.

15 (11) If the defendant is placed on probation or paroled OR
16 THE COURT IMPOSES A CONDITIONAL SENTENCE UNDER SECTION 3 OF THIS
17 CHAPTER, any restitution ordered under this section shall be a
18 condition of that probation, ~~or~~ parole, OR SENTENCE. The court
19 may revoke probation OR IMPOSE IMPRISONMENT UNDER THE CONDITIONAL
20 SENTENCE and the parole board may revoke parole if the defendant
21 fails to comply with the order and if the defendant has not made
22 a good faith effort to comply with the order. In determining
23 whether to revoke probation or parole OR IMPOSE IMPRISONMENT, the
24 court or parole board shall consider the defendant's employment
25 status, earning ability, AND financial resources, the willfulness
26 of the defendant's failure to pay, and any other special

1 circumstances that may have a bearing on the defendant's ability
2 to pay.

3 (12) A defendant who is required to pay restitution and who
4 is not in willful default of the payment of the restitution may
5 at any time petition the sentencing judge or his or her successor
6 to modify the method of payment. If the court determines that
7 payment under the order will impose a manifest hardship on the
8 defendant or his or her immediate family, the court may modify
9 the method of payment.

10 (13) An order of restitution entered under this section
11 remains effective until it is satisfied in full. An order of
12 restitution is a judgment and lien against all property of the
13 defendant for the amount specified in the order of restitution.
14 The lien may be recorded as provided by law. An order of resti-
15 tution may be enforced by the prosecuting attorney, a victim, a
16 victim's estate, or any other person or entity named in the order
17 to receive the restitution in the same manner as a judgment in a
18 civil action or a lien.

19 (14) Notwithstanding any other provision of this section, a
20 defendant shall not be imprisoned, jailed, or incarcerated for a
21 violation of probation or parole ~~—~~ or otherwise ~~—~~ for failure
22 to pay restitution as ordered under this section unless the court
23 or parole board determines that the defendant has the resources
24 to pay the ordered restitution and has not made a good faith
25 effort to do so.

26 (15) In each case in which payment of restitution is ordered
27 as a condition of probation, the probation officer assigned to

1 the case shall review the case not less than twice yearly to
2 ensure that restitution is being paid as ordered. The final
3 review shall be conducted not less than 60 days before the
4 ~~expiration of the~~ probationary period EXPIRES. If the proba-
5 tion officer determines that restitution is not being paid as
6 ordered, the probation officer shall file a written report of the
7 violation with the court on a form prescribed by the state court
8 administrative office. The report shall include a statement of
9 the amount of the arrearage ~~—~~ and any reasons for the arrearage
10 ~~that are~~ known by the probation officer. The probation officer
11 shall immediately provide a copy of the report to the prosecuting
12 attorney. If a motion is filed or other proceedings are initi-
13 ated to enforce payment of restitution and the court determines
14 that restitution is not being paid or has not been paid as
15 ordered by the court, the court shall promptly take action neces-
16 sary to compel compliance.

17 (16) If a defendant who is ordered to pay restitution under
18 this section is remanded to the jurisdiction of the department of
19 corrections, the court shall provide a copy of the order of res-
20 titution to the department of corrections when the defendant is
21 ordered remanded to the department's jurisdiction.

22 Sec. 3. (1) If a person is convicted of an offense punish-
23 able ~~at the discretion of the court, either~~ by A fine or
24 imprisonment, OR BOTH, the court may ~~award against the offender~~
25 IMPOSE a conditional sentence and order the person to pay a fine,
26 with or without the costs of prosecution, AND RESTITUTION AS
27 PROVIDED UNDER SECTION 1A OF THIS CHAPTER OR THE CRIME VICTIM'S

1 RIGHTS ACT, 1985 PA 87, MCL 780.751 TO 780.834, within a limited
2 time ~~to be expressed~~ STATED in the sentence ~~,~~ and, in default
3 of payment, ~~to suffer the imprisonment~~ SENTENCE THE PERSON as
4 ~~is~~ provided by law. ~~and awarded by the court.~~

5 (2) Except for a person who is convicted of criminal sexual
6 conduct in the first or third degree, the court may also place
7 the offender on probation with the condition that the offender
8 pay a fine, costs, damages, RESTITUTION, or any combination in
9 installments with any limited time and may, ~~in case of the~~ UPON
10 default in any of ~~such~~ THOSE payments, impose ~~such~~ sentence
11 as ~~is~~ provided by law.

12 Enacting section 1. This amendatory act does not take
13 effect unless Senate Bill No. 781
14 of the 89th Legislature is enacted
15 into law.